IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

NEW ERA, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**NO: 94-CV-0893-PER**
	)	
HOWARD HAMILTON, et al.,	)	**BK No. 91-31347**
	)	
Defendant.	)	

MEMORANDUM AND ORDER

RILEY, District Judge:

Before this Court is an appeal of an oral ruling by United States Bankruptcy Judge Kenneth J. Meyers made on October 26, 1994, denying Plaintiff's/Debtor's motion to enforce an automatic stay. Oral argument on the appeal was held on March 21, 1996, and the matter was taken under advisement. New Era, Inc. contends that the Bankruptcy Court erred by denying its motion to enforce an automatic stay. The Hamilton's counter that the Bankruptcy Court's Order was correct and should be affirmed. The Bankruptcy Court's Order was an interlocutory order from a core proceeding. Thus, jurisdiction is proper pursuant to **28 U.S.C. § 158(a).**

I. Introduction

On December 3, 1991, New Era, Inc. filed a petition of bankruptcy under Chapter 11 of the Bankruptcy Code. Two years earlier, Howard and Laura Hamilton (owners of Magna-Fab Companies, Inc.) sued New Era in state court seeking to recover damages from a fire on property the Hamiltons leased to New Era. New Era's Chapter 11 filing was later converted to a Chapter 7 action.[1]

[1]Shortly thereafter, Donald Samson was appointed trustee of the estate of New Era. In November 1992, New

On February 5, 1992, the Hamiltons filed a motion in the bankruptcy action seeking relief from the automatic stay which would permit them to pursue their state court action against New Era ("Debtor"). The Hamiltons based their request to lift the stay on three arguments: (1) insurance coverage existed for the Hamiltons' claim; (2) Debtor was being defended by counsel provided by Debtor's insurance company; and (3) Debtor's bankruptcy did not discharge the insurance company from its obligation to pay for any judgment or damage within the coverage of the insurance policy. The Bankruptcy Court entered a general form order on February 21, 1992, granting the Hamiltons' request to lift the automatic stay after Debtor or other parties failed to file a timely response.

Debtor moved to enforce the automatic stay on August 3, 1994. On October 26, 1994, Bankruptcy Judge Kenneth J. Meyers denied Debtor's motion to enforce the automatic stay. It is that ruling, from which an appeal has been taken to this Court.

II. Standard of Review

Reviewing courts must accept a bankruptcy court's findings of fact unless they are clearly erroneous. **FEDERAL RULE OF BANKRUPTCY PROCEDURE 8013**. Conclusions of law, however, are subject to *de novo review*. ***Calder v. Camp Grove State Bank*, 892 F.2d 629, 631 (7th Cir. 1990), *citing In re Longardner & Assoc., Inc.*, 855 F.2d 455, 459 (7th Cir. 1988), *cert. denied*, 489 U.S. 1015 (1989).**

III. Analysis

Inasmuch as Debtor was dissolved and no longer existed, Debtor's standing was questionable. This Court entered an Order on May 21, 1996, which gave Debtor ten days to demonstrate that it still had

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Era was dissolved by the Illinois Secretary of State.

standing to pursue this appeal. Debtor responded with a citation to 805 ILCS 5/12.80, "Survival of remedy after dissolution." which provides the following:

> the dissolution of a corporation ... shall not take away nor impair any remedy available to ... such corporation, its directors, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within five years after the date of such dissolution.

This statute is a corporate survival statute which is "Intended to continue the existence of a corporation for purposes of winding up corporate affairs." ***In re Morris*, 171 B.R. 999, 1004 (S.D. Ill. 1993)**. Debtor filed for bankruptcy protection on December 3, 1991. Debtor was not dissolved until November 2, 1992. Therefore, Debtor, even though dissolved, still has legal capacity to maintain actions for the purpose of winding up its affairs within a five-year period.

This observation does not end the discussion. ***Depoister v. Mary M. Holloway Foundation*, 36 F.3d 582, 585 (7th Cir. 1994)**, provides a detailed discussion of standing requirements in bankruptcy appeals:

> In order to appeal a bankruptcy court's order, a litigant must qualify as a "person aggrieved" by the order. A "person aggrieved" by a bankruptcy order must demonstrate that the order diminishes the person's property, increases the person's burdens, or impairs the person's rights. In general, "[o]nly those persons who are directly and adversely affected pecuniarily by an order of the bankruptcy court have been held to have standing to appeal that order." Whether an appellant is a person aggrieved is ordinarily a question of fact for the district court.

Debtor maintains that Debtor, its officers, directors and shareholders are "persons aggrieved" by the Bankruptcy Court's failure to enter an order enforcing the automatic stay preventing an excess judgment of approximately $1,300,000 from being obtained by the Hamiltons in state court.[2]

The settlement agreement and assignment entered into by the Hamiltons and Debtor through

[2]The state court proceedings went forward, and on August 10, 1994, a jury verdict of Two Million Eight Hundred Three Thousand Nine Hundred Seventy-four Dollars ($2,803,974.00) was rendered against New Era. Following post-trial motions, judgment was entered against New Era on October 14, 1994 in the sum of $2,303,974. The judgment was appealed to the Fifth District Appellate Court of Illinois, which granted the plaintiffs motion to dismiss the appeal for mootness.

Debtor's trustee is not even addressed by Debtor.[3] The terms of this agreement prevent the Hamiltons from seeking to satisfy their judgment and interest in the state lawsuit "against the real property and/or personal or corporate property on New Era, Inc. or Robert Schmale ... and waives its right to file a claim in the New Era, Inc. bankruptcy proceeding."

Furthermore, by the terms of this agreement, 5% of any proceeds collected by the Hamiltons above $1,000,000 would be returned to the bankruptcy estate. This Court thinks that the terms of this settlement would have collateral estoppel effect in the declaratory judgment action filed by the insurer.[4]

Debtor's appeal has not addressed the terms of the settlement agreement. Thus, the appeal has not demonstrated with particularity that in spite of said agreement, Debtor, specific officers, directors and/or shareholders are potentially subject to some future exposure for liability.

IV. Conclusion

There is no evidence that a "person aggrieved" has brought this appeal. Therefore, Debtor fails to meet the necessary requirements of standing for purposes of a bankruptcy appeal. The Bankruptcy Court's Order of October 26, 1994 which denied the motion to enforce the stay is **AFFIRMED.**

IT IS SO ORDERED.

DATED this 21st day of June, 1996.

/s/ PAUL E. RILEY
United States District Judge

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[3]On March 9, 1995, Samson filed an application to approve the settlement agreement and assignment. Judge Meyers approved the settlement agreement and assignment on May 4, 1995.

[4]Debtor's request for relief, specifically, "that the Bankruptcy Court enter an order protecting New Era to such an extent that the Hamiltons are barred from pursuing New Era, New Era's property or its estate for any amount of Hamiltons' judgment that exceeds available insurance proceeds" is rendered moot by the settlement and assignment.